

1 Thomas C. Horne  
Attorney General

2 Katherine E. Watanabe  
3 Assistant Attorney General  
4 State Bar No. 027458  
5 1275 W. Washington  
6 Phoenix, Arizona 85007  
7 Telephone: (602) 542-7695  
8 Fax: (602) 542-7670  
9 E-mail: Katherine.Watanabe@azag.gov

10 Attorneys for Defendant

11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF ARIZONA**  
14

15 Peter J. Little,  
16  
17 Plaintiff,

18 v.

19 Charles L. Ryan,  
20  
21 Defendant.

No: CV11-781-PHX-FJM (LOA)

**DEFENDANT RYAN'S REPLY IN  
SUPPORT OF HIS UNENUMERATED  
RULE 12(B) MOTION TO DISMISS**

22 Defendant Ryan replies in support of his Unenumerated Rule 12(b) Motion to  
23 Dismiss (Dkt. 22). In his Motion, Defendant Ryan asserts that Little failed to exhaust his  
24 administrative remedies regarding the claim alleged in his First Amended Complaint that  
25 the money from his retention account was being put in an interest bearing account and that  
26 the earned interest was being used for government projects. (Dkt. 13 at 13.) In his  
Response (Dkt. 24), Little fails to come forward with any evidence that shows that he did  
exhaust his administrative remedies with regard to the issue before the Court. As such, the  
Court should dismiss Little's First Amended Complaint.

In its January 13, 2012 Order, the Court advised Little that, in response to  
admissible evidence from Defendant, he needed to produce evidence to show that he did  
exhaust his administrative remedies. (Dkt. 23 at 1-2.) While Little does attach a copy of

1 the paperwork for Grievance Appeal 10-Y06-013, that grievance relates solely to his desire  
2 to transfer the money in his retention fund to his spendable account and to his mother.  
3 (Dkt. 24 at 9-20.) The grievance makes no mention of the money being kept in an interest  
4 bearing account, that Little was entitled to that interest, or that ADC used the interest for  
5 government projects. (*Id.*) The only mention of interest in the grievance is in the proposed  
6 resolution section, in which Little states that he believes 8% interest is just compensation  
7 for denying him access to the money in his retention account. (*Id.* at 11.) Little's claim  
8 that his money was being illegally kept in a retention account was dismissed by this Court  
9 in its screening order. (Dkt. 14 at 8.) The only claim that remains is that the money was  
10 kept in an interest bearing account and that the earned interest was used for government  
11 projects when Little was entitled to the interest. (*Id.*)

12 Little further claims that he went beyond what was required of him and inquired  
13 into the status of his grievance responses once the response times had passed. (*Id.* at 3-6.)  
14 He also claims that he filed a special action petition to obtain his retention funds. (*Id.* at  
15 6.) Neither of these arguments is relevant to the issue of whether he exhausted his  
16 administrative remedies with regard to the issue of his money being put in an interest  
17 bearing account from which the earned interest was used for government projects.  
18 Whatever steps Little took in Grievance Appeal 10-Y06-013 have no bearing on the issue  
19 before the Court since that grievance dealt solely with Little's desire to have the money in  
20 his retention account transferred to his spendable account and to his mother.<sup>1</sup> As for his  
21 filing of a special action petition, that is neither a part of the administrative remedies  
22 procedure nor do the documents he provides give any indication as to why the special  
23

---

24 <sup>1</sup> Little makes much of the fact that he followed up whenever he did not receive a response  
25 to his grievances within the timeframes laid out by DO 802; however, as he was informed  
26 in a response to an inmate letter (Dkt. 24 at 13), this was unnecessary because a lack of  
response within the established timeframe entitles the grievant to proceed to the next level  
of the process. (Dkt. 22, Exhibit 1 at Attachment A at 802.07-1.2.4, Attachment B at  
802.01-1.11.)

1 action is relevant to this case (Dkt. 24 at 21-24). Little claims only that the special action  
2 was to gain access to the funds in his retention account (Dkt. 24 at 6), which has nothing to  
3 do with what kind of account the funds were being kept in or what was being done with the  
4 interest.

5 In conclusion, Little has proven only that he exhausted his administrative remedies  
6 with regard to an issue that was dismissed by this Court in its screening order. Because  
7 Little failed to exhaust his administrative remedies with respect to his claim that the money  
8 from his retention account was being put in an interest bearing account and that the earned  
9 interest was being used for government projects, Defendant Ryan respectfully requests this  
10 Court dismiss Little's First Amended Complaint in its entirety.

11 RESPECTFULLY SUBMITTED this 13th day of February, 2012.

12 THOMAS C. HORNE  
13 Attorney General

14 s/ Katherine E. Watanabe  
15 KATHERINE E. WATANABE  
16 Assistant Attorney General  
17 Attorney for Defendant

18  
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on February 13, 2012, I served the attached document and  
21 Notice of Electronic Filing by mail on the following, who is not a registered participant of  
the CM/ECF System:

22 Peter J. Little, ADC#173397  
23 ASPC-Yuma / Cibola Unit  
24 P.O. Box 8820  
San Luis, AZ 85349  
*Plaintiff pro se*

25 s/ M. Beke  
26 2591546